

JUDGMENT NO 69 YEAR 2025

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

[omitted]

*Conclusions on points of law*

1.– By the referral order registered as No 193 of the 2024 Register of Referral Orders, the Ordinary Court of Florence (*Tribunale Ordinario di Firenze*), First Civil Section, raised questions concerning the constitutionality of Article 5 of Law No 40/2004, in relation to Articles 2, 3, 13, 32 and 117(1) of the Constitution, the latter in relation to Articles 8 and 14 of the ECHR, as well as Articles 3, 7, 9 and 35 of the CFREU, insofar as it does not provide for access by single women to assisted reproductive technology (ART).

1.1.– The challenged provision states that, “subject to the provisions of Article 4(1), assisted reproductive technology is available to married or cohabiting couples of persons of different sexes, both of whom are of potentially fertile age and living”.

2.– The referring court, after giving reasons for the relevance of the questions raised, sets out the reasons why they are not manifestly unfounded.

2.1.– According to the referring court, Article 5 of Law No 40/2004 first of all violates Articles 2 and 13 of the Constitution, as it infringes upon “the unrestrainable right of individuals to choose to start a family even with children not genetically related to them” and, therefore, upon “the freedom of self-determination with regard to reproductive choices”.

2.2.– Furthermore, the challenged provision appears to be in breach of Article 3 of the Constitution, resulting in unjustified unequal treatment between couples and single women. Concerning the latter, Article 5 of Law No 40/2004 discriminates against those with insufficient financial resources to cover the costs of travelling to foreign countries that make provision for access by single women to ART.

2.3.– Subsequently, the Court of Florence identified a further infringement with reference to Article 32 of the Constitution, arguing that the prohibition on the use of the aforementioned techniques exposes single women to the risk of infertility, considering the impact of the time factor on biological fertility.

2.4.– Lastly, the referring court considers that Article 117(1) of the Constitution has been breached in relation to Articles 8 and 14 of the ECHR and Articles 3, 7, 9 and 35 of the CFREU, since the aforementioned interposed international provisions recognise the right of every person to self-determination regarding their private and family life, as well as the right not to be discriminated against in relation to that right.

[omitted]

6.– Regarding the merits of the case, it is necessary first of all to reconstruct the characteristics of the regulations governing assisted reproductive technology,

highlighting the rationale underlying the various interventions through which this Court has influenced the relevant legislation.

6.1.– Law No 40/2004 was designed to remedy “reproductive difficulties arising from clinical sterility or infertility” (Article 1(1)). The use of assisted reproductive technology is permitted only if it has been established that “the causes preventing reproduction cannot be removed by other means” and provided that the sterility or infertility is due to a “cause ascertained and attested by medical certificate” or – if “unexplained” – is “documented by medical certificate” (Article 4(1)).

This objective is reflected in the subjective requirements set out in the challenged Article 5 of Law No 40/2004 for access to assisted reproductive technology: couples of different sexes, of potentially fertile age and both living, who have been diagnosed with clinical sterility or infertility, pursuant to Article 4(1) of the same law, to which Article 5 refers.

In addition, this provision stipulates that couples must be of legal age and either married or living together.

6.2.– In over two decades since its entry into force, Law No 40/2004 has been subjected to constitutional review on numerous occasions. These challenges have targeted provisions which, in pursuing the legislation’s underlying rationale, appeared to infringe the principles of reasonableness and proportionality, as well as fundamental rights. At other times reviews concerned provisions which, precisely in reflecting its purpose, were seen as placing unreasonable restrictions on the potential inherent in ART and to be detrimental to fundamental rights.

6.2.1.– The first perspective is reflected in Judgment No [151/2009](#), which, seeking to protect women’s health, declared Article 14 of Law No 40/2004 unconstitutional insofar as it provided, in paragraph 2, for the single and simultaneous implantation of no more than three embryos, and insofar as it did not provide, in paragraph 3, that the transfer of embryos, to be carried out as soon as possible, should be performed without prejudice to the woman’s health.

Similarly, in Judgment No [162/2014](#), which declared Article 4(3) of Law No 40/2004 unconstitutional “insofar as it imposes a prohibition on the recourse to heterologous medically assisted reproduction techniques where an illness has been diagnosed that is the cause of absolute and irreversible sterility or infertility for couples falling under Article 5(1) of the Law”. This prohibition appeared to be not only unreasonable in respect of the purpose of addressing the “most serious illnesses”, but also disproportionate in relation to the objective of ensuring protection for children yet to be born. The interest of the child in having the genetic heritage of both parents was held to be constitutionally irrelevant, whereas the interest in knowing one’s genetic origins was safeguarded under the regulations governing adoption.

6.2.2.– Alongside the rulings of the Constitutional Court, which removed unreasonable and disproportionate prohibitions in pursuit of the law’s objectives, there is a first decision which declared the questions of reasonableness concerning those provisions founded, as they reflect the aim of the law, which was to define and regulate ART.

In particular, Articles 1(1) and (2) and 4(1) of Law No 40/2004 were declared unconstitutional, being incompatible with Articles 3 and 32 of the Constitution insofar as

they did not allow fertile couples access to ART even if they were “carriers of a transmissible genetic disease” that meets the criteria of severity referred to in Article 6(1)(b) of Law No 194 of 22 May 1978 (Provisions for the social protection of motherhood and termination of pregnancy), as ascertained by appropriate public facilities” (Judgment No 96/2015, followed by Judgment No 229/2015, which intervened on the system of penalties related to the prohibition of pre-implantation diagnosis).

The extension of the scope of the law – from the treatment of clinical sterility or infertility alone to the prevention of the risk of transmission of serious genetic diseases – was justified, in the wake of a ruling by the ECtHR (judgment of 28 August 2012, *Costa and Pavan v. Italy*), by the need to avoid possible recourse to the “undeniably more traumatic [and] (even repeated) voluntary termination of natural pregnancies”, in order to protect the health of the mother.

6.2.3.– On the other hand, this Court rejected questions of constitutionality concerning the other provision that reflects the objectives pursued by Law No 40/2004, namely Article 5.

In particular, Judgment No [221/2019](#) declared unfounded – with reference to Articles 2, 3, 31(2), 32(1) and 117(1) of the Constitution, the latter in relation to Articles 8 and 14 of the ECHR, as well as to additional international provisions – the questions of constitutionality of the previously mentioned Article 5, insofar as it does not allow access to ART by same-sex couples and, specifically, by female couples. At the same time, the questions raised in relation to Article 12(2), (9) and (10) of the same law, concerning the penalties for failure to comply with the access criteria, were rejected.

This Court, therefore, ruled out the possibility of intervening to extend the function of ART from constituting a mere remedy for clinical sterility and infertility to become a means of access to ART in cases of “physiological” infertility.

Faced with an intervention that would have significantly changed the very rationale of a regulation involving “ethically sensitive issues” (Judgment No [162/2014](#)), this Court considered it to belong “‘primarily to the evaluation of the legislator’ (Judgment No 347/1998)” to identify “a reasonable balancing point between the conflicting needs, with respect for the dignity of the human person” (Judgment No [221/2019](#)).

Consequently, the Court deemed that it could only verify that the legislative choice did not manifestly violate the principle of reasonableness, which was denied with reference to Article 5 of Law No 40/2004, aimed at ensuring that children yet to be born enjoy “conditions which, according to [...] [normative] evaluation and in the light of current opinions in society, appear, in theory, to be the best ‘starting’ conditions” (again, Judgment No [221/2019](#)).

At the same time, the ruling held that any intervention could not be limited to cases in which both (or at least one of) the women in the couple, besides being prevented from having a child because the requirement that partners be of different sexes is absent, are also affected by pathological sterility or infertility.

It was, in fact, remarked that, while the “presence of reproductive pathologies is a relevant feature for different-sex couples, in that it renders impossible their normal fertility”, conversely, it represents “an irrelevant variable [...] for same-sex couples, who would be infertile in any case”.

7.– This Court has now received questions similar to those mentioned above, concerning single women rather than female couples.

In the present proceedings, questions are raised concerning the constitutionality of Article 5 of Law No 40/2004 insofar as it does not number single women among those who may be eligible for ART.

At this point, it must be specified that the grounds for the referral order do not suggest any limitation of this Court’s intervention solely to the cases indicated in Article 4(1) of Law No 40/2004 as amended by Judgment No 96/2015, namely to situations where a woman is affected by clinical sterility or infertility or risks transmitting serious genetic diseases.

The referring court requests an extension of the provision that would simply allow single women access to ART, which leads this Court to believe that the objective is to dispense with the need to ascertain the prerequisites set out in Article 4(1) of Law No 40/2004, to which Article 5 of the law expressly refers.

This Court therefore finds that the form of remedy sought by the referring court cannot be confined to cases of clinical sterility or infertility or to those concerning the transmissibility of genetic illness by single women and, in any event, excludes the possibility of limiting its possible intervention to women who find themselves in such situations.

As previously noted in Judgment No [221/2019](#), “‘physiological’ infertility” renders any further impediments irrelevant.

8.– Having clarified the scope of the parameters of the legal issue, the questions raised regarding Articles 2 and 117(1) of the Constitution, the latter in relation to Article 8 of the ECHR, must be examined both primarily and jointly.

The questions are unfounded.

9.– This Court, in line with its previous ruling (Judgment No [221/2019](#)), considers that the legislature’s discretion lies primarily in the teleological delineation of the regulatory framework governing access to assisted reproductive technology.

The matter concerns the delicate relationship between the regulatory function of the law and the potential inherent in a technique which, insofar as it relates to reproduction, has significant bioethical implications and far-reaching social repercussions *vis-à-vis* interpersonal and family relationships.

This Court, therefore, is only responsible for ascertaining that, in relation to the interest that is assumed to have been infringed, the threshold of manifest unreasonableness and disproportion has not been exceeded, also taking into account the evolution of the legal system.

9.1.– It is therefore necessary, first of all, to reconstruct the reasons underlying the choices made by the legislature in 2004.

In drawing up a “first comprehensive piece of legislation” (Judgment No 45/2005, quoted in Judgment No [221/2019](#)), the legislature aimed to remove assisted reproductive technology from what has been defined as a legal limbo by balancing interests in accordance with the precautionary principle.

Having regard to techniques capable of fertilising oocytes independently of the natural process of procreation, the legislature sought to avoid creating an excessive distance from the model of natural generation of life. At the same time, it sought to protect *a priori* the interests of children yet to be born, aware of the difference between assisted reproductive techniques and the intimate, purely private dimension of natural procreation, which only tolerates *a posteriori* measures to safeguard the child once born.

For this reason, the legislature, on the one hand, referred to couples meeting the requirements of natural procreation – different-sex couples, of potentially fertile age, and living – who may access the techniques insofar as they are affected by clinical sterility or infertility or may transmit genetic diseases.

On the other hand, amid uncertainty about the repercussions such a change may have on children yet to be born, the legislature identified, in their interest, a starting solution deemed suitable to provide, in theory, the best protection of the child. This is associated with the presence of future parents identified as a couple formed by adults – who are therefore presumed to be mature – and united by an emotional bond, through marriage, according to the model of the family referred to in Article 29 of the Constitution, or through cohabitation, according to the model referred to in Articles 2 and 30 of the Constitution.

This solution is grounded in the Constitution itself, which, in turn, reflects the stratification of social models that have emerged over time.

9.2.– Nevertheless, this does not represent a constitutionally required choice, since the Constitution does not embrace only models of family composed of a couple of parents of different sexes united by emotional bonds.

This Court has recognised in the past that the very notion of family “cannot be considered to have been ‘crystallised’ with reference to the time when the Constitution entered into force, because [it is] endowed with the flexibility that is inherent within constitutional principles and[is] therefore to be interpreted taking account not only of the transformations within the legal system, but also the evolution of society and customs” (Judgment No 138/2010, which rejected the possibility of ascribing unions between persons of the same sex to Article 29 of the Constitution, but included them among the social formations referred to in Article 2 of the Constitution).

At the same time, this Court has not ruled out the “the capacities of a single woman, a homosexual couple, or a heterosexual couple advanced in age to effectively perform parental functions, if need be” (Judgment No [221/2019](#), cited in Judgment No 230/2020).

Lastly, in Judgment No 68/2025, this Court, ruling on the matter of a child born in Italy following an ART procedure carried out abroad by two women in accordance with foreign law, on the basis of which, had the child been born abroad, the parental bond would have been recognised in Italy also with respect to the intended mother – held, in the best interests of the child, that the intended mother may recognise it.

10.– Assuming, then, the absence of constitutional impediments to the legislature extending access to assisted reproductive technology to family units other than those listed in Article 5 of Law No 40/2004, it is now necessary to verify whether the failure to take single women into consideration withstands the scrutiny of not being manifestly unreasonable or disproportionate.

10.1.– The interest that is assumed to have been infringed, with reference to Article 2 of the Constitution and Article 8 of the ECHR, through Article 117(1) of the Constitution, is that of procreative self-determination, which can also be attributed to the protection of private life.

This interest is not an expression of a freedom that has the same scope as what technology potentially allows, nor does it establish a claim to a right to parenthood (Judgments of this Court Nos [33/2025](#), [33/2021](#), 230/2020 and [221/2019](#); as well as ECtHR decision of 5 December 2019, *Petithory Lanzmann v. France*, paragraph 18; Judgments of 24 January 2017, *Paradiso and Campanelli v. Italy*, paragraph 141, and 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).

Conversely, it is recognised both in Article 2 of the Constitution (Judgments Nos [33/2025](#), 161/2023, [221/2019](#) and [162/2014](#)) and in Article 117(1) of the Constitution, the latter in relation to Article 8 of the ECHR, as an interest in realising one's personality in a relational dimension which, as such, must be capable of protecting the other interests implicated in the same relationship (ECtHR, judgments 27 May 2021, *Jessica Marchi v. Italy*, para. 60; 17 April 2018, *Lazoriva v. Ukraine*, para. 66; 16 January 2018, *Nedescu v. Romania*, para. 66; 24 January 2017, *Paradiso and Campanelli v. Italy*, paras. 159, 161-165; 16 December 2010, *A, B and C v. Ireland*, para. 212; Grand Chamber, 10 April 2007, *Evans v. the United Kingdom*, para. 71).

Parenthood-oriented self-determination can assert its expansive effect insofar as it either seeks to counter solutions “that, in the light of the totality of interests involved, are unreasonable and not proportionate to the objective pursued (Judgment No [221/2019](#))” (Judgment No [33/2025](#)) or contributes to supporting a finding of unreasonableness of those same norms that reflect the purposes guiding the legislature, taking into account all the interests involved.

10.2.– The legislature's decision not to endorse a plan to become a parent that leads to the conception of a child in a context which, at least *a priori*, implies the exclusion of the father's role, is still attributable to the precautionary principle in the interests of children yet to be born. Therefore, with respect to the need to protect the latter, the resulting restriction on the single woman's procreative self-determination cannot, within the current regulatory framework, be regarded as manifestly unreasonable or disproportionate.

Conversely, it is not appropriate to invoke the solution recently adopted by this Court in response to a woman's request to proceed with the implantation of a cryopreserved embryo, if, in the meantime, the emotional bond with the father, who seeks to revoke his consent, has broken down (Judgment No [161/2023](#)).

The set of interests that takes shape in access to ART techniques is not, in fact, comparable to that which emerges in the conduct of the procedure once the oocyte has been fertilised.

First of all, in that situation, the provision allowing implantation, for which the father's consent is deemed irrevocable, does not deny the child's inchoate right to the legal safeguards associated with paternity. Moreover, it does not correspond to the woman's mere self-determination, since the latter's consent to the implantation completes a procedure that exposes her to health risks, and by virtue of which, as the embryo has

already been formed, “has within it the principle of life” and, as such, is drawn into the broad embrace of Article 2 of the Constitution (Judgments No [161/2023](#), No [84/2016](#) and No [229/2015](#)), the embryo can be born.

Ultimately, this Court does not consider that a woman’s sole interest in parenthood can demonstrate the manifest unreasonableness and disproportionality of a legislative choice that, in line with the precautionary principle, is chiefly concerned with the interests of children yet to be born.

This is especially true in a legal context such as the present one, which does not totally deny the interest of single persons in parenthood.

This Court itself recently removed, with reference to international adoption, the prohibition that prevented single persons from undergoing an assessment of their suitability to adopt (Judgment No [33/2025](#)).

Such a possibility, afforded by adoption, does not undermine the absence of manifest unreasonableness or disproportionality in the safeguards adopted by the legislature in the field of ART.

In the context of adoption, individual self-determination is directed toward the same interest of the child reflected in the aims of adoption. When children and young people are abandoned and would otherwise remain in settings that fall short of a stable, harmonious family, an outright ban on single adopters is a disproportionate way to safeguard their best interests; the interest in receiving a two-parent upbringing could, at most, justify giving couples preferential treatment.

Additionally, courts directly safeguard the child’s interests in adoption by evaluating whether the prospective adoptive parent can provide a stable and harmonious environment; this assessment underpins all stages of the process.

10.3.– The conclusions reached with regard to the infringement of self-determination under Article 2 of the Constitution likewise extend to the right to private life under Article 117(1) of the Constitution, in relation to Article 8 of the ECHR, as interpreted by the ECtHR.

The discretion that this Court affords to the legislature in regulating the criteria for access to ART is akin to the broad margin of appreciation that the ECtHR leaves to the Contracting States both in the decision concerning the need for the regulation and in striking a balance between the various interests involved (ECtHR, judgment of 8 December 2022, *Pejřilová v. Czech Republic*, paragraph 43; 5 May 2022, *Lia v. Malta*, paragraph 60; 3 November 2011, *S.H. and Others v. Austria*, paragraph 97; 10 April 2007, *Evans v. United Kingdom*, paragraphs 81 and 82).

This does not entail, as also stated by the ECtHR, an exemption from any assessment of the States’ actions, but envisages a review which – like that exercised by this Court – presupposes the prior evaluation of the arguments underlying the choices made by the legislature, in order to be able to verify whether a correct balance has been struck between the interests pursued by the State and those directly affected by such legislative choices (“to examine carefully the arguments taken into consideration during the legislative process and leading to the choices that have been made by the legislature and to determine whether a fair balance has been struck between the competing interests

of the State and those directly affected by these legislative choices”, ECtHR, judgment of 5 May 2022, *Lia v. Malta*, paragraph 61).

It is not a question of investigating whether the individual State could have adopted a different solution, but whether, in making the choice under scrutiny, it exceeded the margin of appreciation afforded to it (“the central question in terms of Article 8 of the Convention is not whether a different solution might have been adopted by the legislature that would arguably have struck a fairer balance, but whether, in striking the balance at the point at which it did, the Czech legislature exceeded the margin of appreciation afforded to it under that Article”, ECtHR, judgment 8 December 2022, *Pejřilová v. Czech Republic*, paragraph 55).

The breadth of this margin therefore means that a violation of Article 8 of the ECHR only occurs when legislation manifestly and unreasonably affects the exercise of the right to respect for private life, producing a wholly unbalanced reconciliation between private interests and the aims pursued by the State. A violation in this sense was found in the case of the refusal to allow a couple to use ART because one of the partners was in prison (Grand Chamber, judgment of 4 December 2007, *Dickson v. the United Kingdom*) or in the case of the refusal to allow a couple access to ART because the woman was 43 years old, while the regulations on potential fertility considered it “desirable” to comply with the age limit of 42 (judgment of 5 May 2022, *Lia v. Malta*).

However, no conflict with Article 8 of the ECHR was found with regard to the prohibition of donor fertilisation under Austrian law (judgment of 3 November 2011, *S.H. and Others v. Austria*), or with regard to the prohibition of *post-mortem* fertilisation in France and the Czech Republic (judgments of 14 September 2023, *Baret and Caballero v. France*, and 8 December 2022, *Pejřilová v. Czech Republic*).

In the light of the aforementioned case law, the decision made by the Italian legislature not to allow single women access to ART falls within the margin of appreciation of the State and, consequently, does not violate Article 8 of the ECHR as interpreted by the ECtHR.

11.– Having emphasised the groundlessness of the issues raised concerning Articles 2 and 117(1) of the Constitution, the latter in relation to Article 8 of the ECHR, the question concerning Article 32 of the Constitution is likewise unfounded.

The referring court infers the harm to the woman’s health from the passage of time and the consequent risk of exceeding the physiologically fertile age.

However, infertility due to age cannot be considered a medical condition and, therefore, cannot be afforded the same protection as the right to health.

Similarly, it serves no purpose to invoke mental health, which is certainly subject to the protection referred to in Article 32 of the Constitution (see, among others, Judgments Nos [161/2023](#) and [162/2014](#)), but which cannot be extended to encompass the feeling of disappointment at the failure to realise another type of interest, such as parenthood-related self-determination (Judgment No [221/2019](#)).

12.– As to the questions raised with regard to Article 3 of the Constitution, the referring court refers to unequal treatment in relation to two distinct aspects.

12.1.– First, the referring court indicates an unreasonably differentiated regime in the comparison between the category of single women and that of different-sex couples.

The question at hand may be examined together with the one raised against Article 14 of the ECHR, in connection with Article 8 of the ECHR and by way of Article 117(1) of the Constitution, which, according to the case law of the ECtHR, prohibits the different treatment of persons who are in comparable situations without objective and reasonable justification, thus revealing a discriminatory intent.

In the light of the rationale of Article 5 of Law No 40/2004 and that of the entire regulatory framework governing ART, the categories of single women and different-sex couples are not of the same kind and do not, therefore, require the same treatment.

As already noted above, Law No 40/2004 directs ART techniques toward the objective of offering a remedy for sterility or infertility that have a clinical cause which cannot be remedied by “other” medical treatment (Judgments Nos [221/2019](#), [96/2015](#) and [162/2014](#)). The physiological infertility of a single woman is not comparable to this situation, so the heterogeneity of the two groups of cases does not amount to an unreasonable disparity of treatment.

In this respect, the ECtHR has also spoken with specific reference to Article 14 of the ECHR.

Precisely with regard to the regulation of ART, it held that, if a national law reserves such techniques for sterile or infertile different-sex couples, attributing to them a therapeutic purpose, this choice cannot be regarded as a source of discrimination against those who cannot procreate by their very nature, since the situations being compared are not comparable in the light of the rationale of the regulations (ECtHR, judgment of 15 March 2012, *Gas and Dubois v. France*).

12.2.– Lastly, the referring court points to a disparity of treatment related to the financial status of women, since the current rules on subjective eligibility requirements favour wealthier single women, who can obtain ART techniques abroad, while less wealthy women are, under the current regime, denied this option.

This question is also unfounded.

The alleged disparity in treatment is not attributable to the challenged State regulation, but is, at most, the natural consequence of the existence of foreign laws that prescribe different rules.

This Court has already had occasion to remark that, in the absence of other constitutional infringements, “the mere fact that a prohibition can be circumvented by leaving the country cannot be a valid basis for challenging its compliance with the Constitution”. Otherwise, “domestic laws would always have to conform to the most permissive of all existing foreign laws regulating the same area, in order to avoid violating the principle of equality” (Judgment No [221/2019](#)).

13.– In conclusion, in the current legislative framework, the questions concerning the constitutionality of Article 5 of Law No 40/2004, with reference to Articles 2, 3, 32 and 117(1) of the Constitution, the latter in relation to Articles 8 and 14 of the ECHR, insofar as it does not allow single women access to ART, are unfounded.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

1) *declares* that the questions concerning the constitutionality of Article 5 of Law No 40 of 19 February 2004 (Provisions on assisted reproductive technology), raised with reference to Articles 13 and 117(1) of the Constitution, the latter in relation to Articles 3, 7, 9 and 35 of the CFREU, by the Ordinary Court of Florence, First Civil Section, by the referral order at issue, are inadmissible.

2) *declares* that the questions concerning the constitutionality of Article 5 of Law No 40/2004, raised with reference to Articles 2, 3, 32 and 117(1) of the Constitution, the latter in relation to Articles 8 and 14 of the ECHR, by the Ordinary Court of Florence, First Civil Section, by the referral order at issue, are unfounded.

Decided in Rome, at the seat of the Constitutional Court, Palazzo della Consulta, on 11 March 2025.

Signed: Giovanni Amoroso, President

Emanuela Navarretta, Judge Rapporteur