Corte costituzionale

JUDGMENT NO. 50 OF 2006

Annibale MARINI, President

Alfio FINOCCHIARO, Author of the Judgment

JUDGMENT NO. 50 YEAR 2006

This case concerned the constitutionality of Article 274 of the Civil Code, which subjects court actions for a declaration of biological fatherhood to the condition that a prior ruling of the admissibility of the action be made, and which was challenged on various grounds. The Court ruled that the rule was inherently unreasonable since it left open the possibility for abuse of the measure by both plaintiffs and defendants seeking to delay proceedings even indefinitely, thereby violating Article 24 (right to take action) and Article 111 (reasonable length of proceedings). The original rationale of seeking to protect the interests of the minor cannot stand in the face of these constitutional violations, also in the light of the other changes to the arrangements governing such proceedings over the years.

THE CONSTITUTIONAL COURT

composed of: President: Annibale MARINI; Judges: Franco BILE, Giovanni Maria FLICK, Francesco AMIRANTE, Ugo DE SIERVO, Romano VACCARELLA, Paolo MADDALENA, Alfio FINOCCHIARO, Alfonso QUARANTA, Franco GALLO, Luigi MAZZELLA, Gaetano SILVESTRI, Sabino CASSESE, Maria Rita SAULLE, Giuseppe TESAURO,

gives the following

JUDGMENT

In proceedings concerning the constitutionality of Article 274 of the Civil Code, lodged pursuant to the referral order of 26 November 2004 of the Court of Cassation in civil proceedings pending between Barbara Ivan and Emanuela Minuto Rizzo and others, registered as No. 57 in the register of orders 2005 and published in the *Official Journal* of the Italian Republic, No. 8, first special series 2005.

Considering the entries of appearance by Barbara Ivan and Alessandro and Emanuela Minuto Rizzo;

having heard the Judge Rapporteur Alfio Finocchiaro in the public hearing of 10 January 2006;

having heard Mario Loria, Barrister, for Barbara Ivan and Antonio D'Alessio, Barrister, for Alessandro and Emanuela Minuto Rizzo.

The Facts of the Case

1. - By order of 26 November 2004 – during the course of proceedings involving an appeal against the judgment of the Venice Court of Appeal which declared an action for a court declaration of biological fatherhood to be inadmissible on procedural grounds due to the absence of the prior declaration of the substantive admissibility of the action – the Court of Cassation raised, with reference to Articles 2, 3, 24, 30 and 111 of the Constitution, the question of the constitutionality of Article 274 of the Civil Code "insofar as it subjects the exercise of actions for the recognition of biological fatherhood lodged by an adult pursuant to Article 269 of the Civil Code to the prior conclusion of a procedure to confirm its admissibility".

The referring court states that it referred a similar (but not identical) question during the course of the same proceedings in the referral order of 3 July 2003, in which the doubts concerning the constitutionality of the above provision were discussed at length with reference to four distinct issues: *a*) the supervening inherent unreasonableness of the provision with reference to its original rationale of protecting the defendant against spurious or injudicious initiatives by plaintiffs; *b*) its discriminatory character in relation to biological children, since similar confirmation procedures are not provided for in the corresponding action to ascertain legitimate parentage; *c*) the objectively counter-productive effect of the procedure on the protection of the fundamental rights of biological children pertaining to their status and biological identity; *d*) the question mark over the compatibility of the admissibility proceedings, as understood within a changing legal culture, with the principle of the reasonable length of court proceedings, which is in turn a prerequisite for the right to a fair trial.

The above question was declared manifestly inadmissible by order No. 169 of 2004 due to a dual failure to give reasons: first, on the relevance of the defendants' invocation in proceedings before the lower court of a supervening finding on the inadmissibility of the question; secondly, on the issue of non-manifest groundlessness, on the referring court's failure to consider the parallel goal of the confirmation procedure under Article 274 of the Civil Code of protecting the minor, as held in judgment No. 341 of 1990 and followed in the subsequent judgment No. 216 of 1997.

In the light of the above, the referring court notes that the second referral of the question – pending completion of the supporting reasons – in this context amounts to an "institutionally required act", given the persistence of the doubts over the provision's constitutionality, and also in the light of the clear principle in constitutional case-law that gaps in the reasoning which lead to a declaration of inadmissibility of the question may be filled.

Accordingly, concerning the question of the completion of the reasons given on the question of relevance, the Court of Cassation finds that no ruling was made in Cassation judgment No. 8342 of 1999, which reversed the order staying the merits proceedings pending the outcome of the confirmation procedure. In fact, in that judgment, the Court of Cassation remitted to the trial court the matter "of deciding on the question of the procedural admissibility of the action for recognition given the current lack of a definitive authorising provision pursuant to Article 274 of the Civil Code" (as indeed the Court of Cassation could not have taken such a decision when ruling on the issue of jurisdiction pursuant to Article 42, as amended, of the Code of Civil Procedure), with the result that that judgment amounts to nothing more than a ruling on the jurisdiction to hear the case of the court seized, which had incorrectly terminated proceedings. This meant therefore that it was the trial court alone – i.e. that seized with the action for a court declaration of parentage – which precluded admissibility due to the absence of the procedural prerequisites contained in Article 274 of the Civil Code, in a judgment upheld by the Court of Appeal against which the present appeal was made to the Court of Cassation.

Turning now to the "more complete identification of the contents of the contested provision", concerning the reasons given on the question of non-manifest groundlessness, the referring court specifies that the question raised can only relate to the sole eventuality (which is relevant in the present case) of an action proposed pursuant to Article 269 of the Civil Code by an adult, without in any way impacting upon proceedings concerning minors, as interpreted by judgments No. 341 of 1990 and No. 216 of 1997.

The referring court accordingly observes how the Constitutional Court itself held in the above judgment No. 216 of 1997 that, when ruling on the admissibility of applications submitted by adults, "the existence of elements, including suppositions, which are

capable of making the action appear plausible is sufficient, with the result that a finding of admissibility may be based even on the sole assertions of the appellant".

The procedure under Article 274 of the Civil Code, understood in this way, would clearly no longer be in a position to satisfy the goal for which it was introduced of protecting the putative parent from vexatious or intimidatory applications, so much so that – in the highly unlikely event of a denial of authorisation for the action – the application may be repeated in the light of new claims and is not subject to any temporal limit.

Moreover, the confidential nature of the procedure is argued to be significantly undermined during the appeal stage due to the increasing emphasis given to the contentious character of the procedure, and is entirely eliminated on appeal to the Court of Cassation, given the necessary publicity which accompanies such appeal proceedings.

Ultimately, in relation to applications submitted by adult individuals, the confirmation phase is claimed to have lost all justification and may even be open to manipulation to the detriment of the defendant – for the protection of whom it was originally introduced – precisely due to the repeatability without limits in time of the application.

This gives rise to the question over the constitutionality of the provision in the light of Article 3(2) of the Constitution, due to its inherent unreasonableness; in the light of Article 3(1) of the Constitution, due to the disparity between the resulting treatment of legitimate and biological children in relation to the recognition of fatherhood; in the light of Articles 2, 30 and 24 of the Constitution, due to the removal of the effective protection of fundamental rights pertaining to status and biological identity, "which our general social conscience considers to be essential for the development of the person".

Finally, the apparent breach of Article 111 of the Constitution, flowing from the doubts over the compatibility of the procedure in question with the principle of the reasonable length of court proceedings, also in relation to Article 6(1) of the European Convention on Human Rights, is in the opinion of the referring court a "particularly delicate issue". A convoluted procedural framework, "albeit intended to to heighten guarantees", is claimed by definition not comply with the requirements of a fair trial, the respect for which entails the obligation to maintain reasonable time-scales within the trial,

including, where appropriate, through an examination of the constitutionality of a provision.

2. - Barbara Ivan, plaintiff in the proceedings before the lower court entered an appearance, arguing that the matter should be accepted on the basis of arguments not dissimilar to those set out by the referring court.

3. - Alessandro and Emanuela Minuto Rizzo, defendants in the proceedings for a court declaration of fatherhood as heirs or the heirs of the presumed father, also entered an appearance in proceedings, submitting a copious written statement.

As a preliminary matter, the above parties request a deferral of the public hearing pending the enactment of new legislation, since the approval of an amendment to Article 274 of the Civil Code is now imminent (Article 69 of draft law No. 2430 of the Senate) which, whilst confirming "the due preventive caution represented by the admissibility procedure", would restructure procedures in such a way as to circumvent doubts over its constitutional legitimacy as presented by the referring court.

The parties request the court in the alternative, and in the following order of preference, to make a declaration of inadmissibility, or that the question is groundless, or, should the question be accepted, that its effects shall commence from the date of the judgment.

The question is also argued to be entirely lacking in relevance due to the finding that the action is inadmissible, contained not only in judgment No. 8342 of 1999, issued in proceedings concerning the question of jurisdiction, but also in judgment No. 9033 of 1997, in which the court declared void the decree of admissibility of the action at the time issued by the *Tribunale di Treviso*, due to failure to respect the principle of *audi alteram partem*.

It is also argued that insufficient reasons are given on the issue of non-manifest groundlessness and that it is in any case not well-founded, bearing in mind the essentially pecuniary goal of the action for the court declaration of fatherhood commenced by an adult and the consequent "logical necessity" of a filter which protects the defendant against injudicious or vexatious actions, especially where the action is lodged – as in the case before the court – against the heirs of the heirs of the putative father, who remains entirely unaware of the facts before the court and given the impossibility of relying on DNA evidence following the cremation of the deceased.

A preventive filter of this type on the other hand would not be a total novelty under Italian law, with similar provision for a prior finding of admissibility being made, for example, by Article 5 of law No. 117 on 1988 on the civil liability of magistrates.

The requirement for a preliminary stage addressing questions of admissibility is moreover shown in greater relief where it is considered that, in accordance with a consolidated line of case law, actions for the judicial recognition of biological fatherhood may be lodged together with claims for recognition as an heir, the registrability of which may cause irreparable harm to the legitimate family of the putative father.

4. - Shortly before the date set for the public hearing, the defendants Alessandro and Emanuela Minuto Rizzo submitted a written statement, in which they reiterated the arguments already presented, with reference in particular to the failure to give reasons on the relevance of the question raised, due to the existence of the two findings made in judgments No. 9033 of 1997 and No. 8342 of 1999 of the Court of Cassation.

A further aspect of the action's irrelevance is pointed out in the written statement in relation to the fact that, after having affirmed a mandatory principle of law and having thus at least implicitly considered the constitutionality of the provision on which it was founded, the Court of Cassation raised, at the request of the unsuccessful party, the question of the constitutionality of the very same provision on which the above legal principle had been previously ruled upon by the same court, so much so that the 1st Civil Section of the Court of Cassation re-referred the question of the constitutionality of Article 274 of the Civil Code – after it had been declared manifestly inadmissible by Constitutional Court order No. 169 of 2004 – without remedying the absence of reasons highlighted in that order, but limiting itself to limiting the question of unconstitutionality to that part of the provision which concerned the ruling on the admissibility of the action for a court declaration of the biological fatherhood or motherhood of an adult.

The defendants went on to argue moreover that the question raised was not relevant insofar as it could have no influence on the proceedings before the lower court, which were inadmissible on procedural grounds against the indirect heirs due to the lack of capacity to be sued of the same in the light of judgment No. 21287 of 2005 of the Joined Sections of the Court of Cassation; they also argued that the main proceedings were

void insofar as lodged before a court with no jurisdiction, pointing out that they had been brought before the *Tribunale di Treviso* – prior to judgment No. 2016 of 2001 of the Court of Cassation which, on the matter of jurisdiction, declared the *Tribunale di Roma* to be competent – then being pursued before the Venice Court of Appeal and thereafter in the Court of Cassation, despite the express objection of lack of jurisdiction raised by the defendants following the above judgement No. 2016 of 2001.

The written statement also points out that since the declaration of the admissibility of the action in question, requested again by Ms Ivan, has become definitive by virtue of judgment No. 16531 of 2005 of the Court of Cassation, she may again pursue the merits action before the *Tribunale di Roma*.

On the merits, the question is argued to be manifestly groundless and, should the court be minded to accept it with reference to Article 111 of the Constitution, due to the violation of the requirement of a reasonable length for court proceedings, the defendant requests that the effects of such a decision commence from the date of entry into force of constitutional law No. 2 of 1999.

Conclusions on points of law

1. - The Court of Cassation questions the constitutional legitimacy of Article 274 of the Civil Code, insofar as, by providing for a preliminary confirmation of the admissibility of the action for a court declaration of biological fatherhood or motherhood lodged by an adult individual pursuant to Article 269 of the Civil Code, the contested provision is said to violate Article 3(2) of the Constitution due to an "overstep of Parliament's powers", on account of the inherent contradiction between the current regulation of the procedure – no longer characterised by the secrecy of the inquiries, as least during proceedings before the Court of Cassation, and capable of repetition, in the presence of new elements, without any limit in time – and the original rationale of the provision, which was intended to protect the defendant from injudicious or groundless actions; it is also said to violate Article 3(1) of the Constitution, due to the discriminatory effect of the conditions for the determination of the status of children of married and unmarried parents; thirdly, it is said to violate Articles 2, 30 and 24 of the Constitution, due to the objective hindrances to the protection of the fundamental rights of biological children which such a procedure is claimed to cause; finally, it is said to violate Article 111 of the Constitution due to the unreasonable length of proceedings.

2. - A similar question to that before the court today has already been referred during the course of the same proceedings to this court, which declared it to be manifestly inadmissible by order No. 169 of 2004.

The findings which gave rise to the ruling of manifest inadmissibility concerned on the one hand the lower court's failure to give any reasons for the fact that a finding on the issue of the admissibility of the application had already been made during the course of the principal proceedings through the reversal (Court of Cassation, judgment No. 8342 of 1999) of the order staying the merits proceedings, with the potential consequent irrelevance of the question before the court; on the other hand, on the question of non-manifest groundlessness, the lower court failed to give reasons for the failure to consider the contested provision's additional goal of protecting the minor, held by judgment No. 341 of 1990 of this court, confirmed by judgment No. 216 of 1997, to be one of the goals of the confirmation procedure pursuant to Article 274 of the Civil Code. The referring court therefore erred in not having exhaustively identified the contested provision and the rationale for its existence.

These findings have been superseded by the new referral order.

In fact, the referral order specifies on the first point, not implausibly, that no finding appears to have been made on the admissibility of the action as in judgment No. 8342 of 1999 of the Court of Cassation, bearing in mind the fact that the judgment invited the lower court to rule on the admissibility of the action, and that accordingly the above decision only represents a finding on the competence of the court seized of the matter.

On the second ground for inadmissibility to which order No. 169 of 2004 of this court refers, concerning the failure to specify the contested provision, the new referral order states that the question, having risen during the course of proceedings lodged pursuant to Article 269 of the Civil Code, concerns only applications made by adults.

3. - As a preliminary matter it is necessary to examine the grounds for inadmissibility set out by the defendants in the principal proceedings, who have also entered appearances before this court.

3.1. - The existence of a finding on the inadmissibility of the action for a court declaration of fatherhood is, according to the defendants, clear in judgment No. 9033 of 1997 of the Court of Cassation, in which an order of admissibility issued by the *Tribunale di Treviso* was declared void due to failure to respect the principle of *audi*

alteram partem, is groundless insofar as the above judgment – as moreover already found by the referring court in the first referral order – did not by any means make a definitive finding of inadmissibility, but rather limited itself to remitting the matter to the trial court, which had already found the action to be admissible, for supplementary proceedings in which the parties could be heard.

3.2. - The claim that the reasons given on the question of non-manifest groundlessness were not sufficient is equally groundless, since these reasons went by contrast into particular detail on the unsuitability of the filter created by the procedure contained in Article 274 of the Civil Code and the reasons why it was introduced.

3.3. - Moreover, the objection to the relevance of the question does not appear to be worthy of acceptance in view of the fact that in the aforementioned judgment No. 8342 of 1999 of the Court of Cassation – which, in its ruling on jurisdiction referred to above, upheld the principle that prior to a definitive judgment on admissibility, the claimant party does not have the right to request the court to ascertain biological parentage and that the application made must be declared to be inadmissible on procedural grounds by the court during the merits phase – had already, at least implicitly, examined the compatibility with the Constitution of Article 274 of the Civil Code when making this interpretation.

On this point it should be pointed out that within our system of constitutional guarantees a finding by a lower court on the constitutionality of a provision is absolutely impossible.

This is without prejudice to the status as a binding principle of the assertion at issue in the present case, which was made in relation to the identification of the court with jurisdiction to assess the admissibility of the action for a court declaration of fatherhood, and in a case in which, for complex procedural reasons, the merits action had commenced before the definitive ruling on admissibility and before the Court of Cassation had found that the court had erred in staying proceedings.

3.4. - It also follows that the action is inadmissible due to the irrelevance of the question at issue by virtue of the supervening judgment No. 21287 of the Joined Sections [of the Court of Cassation] of 2005, in which the court found, when ruling on the contrasting views expressed in case law, that the heirs of the heirs of the putative biological father had no capacity to be sued in proceedings for a court declaration of fatherhood.

This objection is also groundless: the assessment of the lack of such capacity on the part of the defendants in the principal proceedings due to a decision taken by the Court of Cassation, adopted in a different court action, does not make the question proposed manifestly inadmissible and in any case is not of any relevance for our present purposes.

3.5. - The court finds to be equally irrelevant the objection made before this court – raised in the written statement submitted shortly before the hearing – that the principal proceedings were void insofar as they were brought before a court with no jurisdiction, raised on the basis of the fact that the case had been brought before the *Tribunale di Treviso* prior to judgment No. 2016 of 2001 of the Court of Cassation which, addressing the question of jurisdiction, declared the *Tribunale di Roma* to have jurisdiction, then being pursued before the Court of Appeal of Venice and thereafter before the Court of Cassation, despite the express objection to that court's jurisdiction raised by the defendants following the above judgment No. 2016 of 2001.

The decision mentioned immediately above, issued in proceedings concerning the admissibility of the action pursuant to Article 274 of the Civil Code, does not bind the court in different merits proceedings pursuant to Article 269 of the Civil Code, given the autonomy of the courts and bearing in mind the fact that the question was not raised in proceedings before the Court of Cassation in which the question of constitutionality currently before this court was discussed.

3.6. - Nor finally can any relevance be attributed to the fact that, following the referral order, the Court of Cassation found the action for a court declaration of biological fatherhood pending between the same parties to be admissible in judgment No. 16531 of 2005, not only because incidental appeals to the Constitutional Court cannot be influenced by subsequent events which may have an impact upon the principal proceedings (see, *inter alia*, orders No. 270 of 2003, No. 383 if 2002, No. 110 of 2000), but also – and above all – because the action before the lower court concerned the right to pursue the claim on the merits in the absence of a ruling on the admissibility of the application: which is in no way changed by the subsequent ruling in question.

4. - Moving now to an examination of the question on the merits, the question is well-founded.

In order to discourage actions commenced with purely intimidatory intentions – as is clear from the Report by the Justice Minister on the definitive project – the 1942 Civil

Code introduced Article 274, providing for a prior confirmation of the admissibility of actions for court declarations of biological fatherhood or motherhood, during the course of which it would be possible to assess, through summary and confidential inquiries, whether there were indications which could justify the action.

Such rulings were to be made in chambers; summary inquiries had to take place without any publicity and had to remain secret, and the order declaring the action to be admissible or inadmissible was not subject to appeal.

Subsequently, this court declared Article 274(2) of the Civil Code to be unconstitutional insofar as it provided that the decision be made by order not accompanied by reasons and not subject to appeal, as well as insofar as it did not comply with the principle of *audi alteram partem* or require and the presence of the defendants, due to violation of Article 24(2) of the Constitution concerning the inviolable right to a defence, and also, again with reference to the same principle, the unconstitutionality of Article 274(3) insofar as it provided that the secrecy of the inquiry be maintained also in relation to the parties (judgment No. 70 of 1965).

In the same judgment, the court found with reference to Article 30 of the Constitution that : “it is clear that a child's search for its father is thereby considered as a fundamental form of legal protection for children born out of wedlock and, as such, is guaranteed by the Constitution”, going on to find that: “the same Article of the Constitution however stipulates that ordinary legislation shall place limits on the above search: limits which may stem from the requirement, contained in sub-section 3, to ensure that the protection of children born out of wedlock is compatible with the rights of legitimate offspring and the need in such delicate matters to safeguard the fundamental rights of the person, also protected in the Constitution, from the dangers of persecution by way of injudicious and vexatious proceedings”.

Following this judgment, Parliament enacted law No. 1047 of 23 November 1971 (Prolongation of the time limits for declarations of fatherhood and amendment of Article 274 of the Civil Code), Article 2 of which set out new provisions governing the ruling of the admissibility of actions, introducing the requirement to give reasons in the order and providing for an appeal to the Court of Appeal, also confirming the non-public nature of the summary inquiry carried out by the court and the obligation to maintain its secrecy.

Due to the contentious nature of the procedure, the Court of Cassation inferred the possibility of an appeal to that court against the order of the Court of Appeal, pursuant to Article 111 of the Constitution.

The action taken in the judgments mentioned above in order to reconcile the summary nature of the procedure with the need to safeguard the right to a fair hearing, through the introduction of the requirement for a debate between the interested parties, the requirement to give reasons for the order on the question of admissibility and the possibility of an appeal to the Court of Appeal, as well as the recognition of the admissibility of an appeal to the Court of Cassation pursuant to Article 111 of the Constitution end up negating that element of secrecy implemented in order to protect the putative father.

The 1975 family law reform left the structure of the procedure unchanged, limiting itself to substituting "specific circumstances" for the "indications" contained in the original wording of Article 274 of the Civil Code as the elements which are required for the ruling on admissibility.

This court has subsequently declared Article 274 of the Civil Code to be unconstitutional insofar as, in relation to minors under the age of sixteen, it did not provide that actions commenced by the parent who is a custodian were admissible only when the court found it to be in the interest of the minor (judgment No. 341 of 1990), considered sufficient, for the purposes of determining the admissibility of the action, the existence of any element, including presumptions, which were capable of making the action appear plausible, going on to specify that "the procedure in question draws inspiration from two parallel goals which do not conflict with one another, having been enacted not only in order to protect defendants against the danger of injudicious and intimidatory actions, but also and above all to protect the minor, who has an interest in the confirmation of a true relationship of parentage which does not prejudice the formation and development of his own personality" (judgment No. 216 of 1997).

It should also be pointed out that, when assessing the "specific circumstances" to which Article 274 of the Civil Code applies in the same way as the criteria of plausibility, rather than certainty, the established case law of the Court of Cassation has found it to be sufficient that the mother's declaration be supported by a *prima facie* case (Court of Cassation, judgments No. 151 of 1998, No. 2346 of 1994, and No. 7742 of 1995),

remitting for examination on the merits the challenges raised by the defendant and limiting itself to addressing the challenges to the procedural admissibility of the action (due to the lapse of time limits, a definitive court judgment, or an out-of-court settlement) in a purely confirmatory manner for the sole purpose of reaching a decision on the admissibility of the main action (Court of Cassation, judgment No. 2979 of 1976). In this way the Court of Cassation confirmed the opinion of those who had considered the judgment of admissibility in question to be the "dead wood" of the legal system which restricted the rights of children to know who their parents are, without safeguarding the requirements of the putative parents. In conclusion, the above procedure may now be considered to be a useless duplicate capable only of encouraging delaying tactics.

Indeed, the development of the procedural regulation of the admissibility procedure described above has completely thwarted the reason why the procedure was originally provided for by Parliament, that is the protection of the defendant against "injudicious and vexatious" initiatives pursued through the summary and secret nature of the proceedings, which were reserved at this stage for the court seized; this means that the court is able under the terms of the provision currently in force to undertake as broad an examination as it deems fit and hence, in accordance with the case law of the Court of Cassation, ranging from on the one hand technical findings capable of resolving the case on the merits, without prejudice to the requirement for their subsequent treatment, to on the other hand considering sufficient the plaintiff's assertions alone.

Therefore, the very structure of the procedural mechanism contained in the contested provision – in clear contradiction of its "preventive" function – encourages, as precisely was found in the referral order, exploitation not only by defendants but also by plaintiffs who, through careful programming of the submission of evidence, are able to guarantee – given the inability to make a definitively confirmed finding of inadmissibility – the possibility of repetition *ad infinitum* of the application for recognition, with the result that defendants could never definitively protect itself from such measures, even when confronted with effectively vexatious actions.

The inherent manifest unreasonableness of the provision (Article 3 of the Constitution) means that the finding of admissibility pursuant to Article 274 of the Civil Code constitutes a serious obstacle to the exercise of the right of action guaranteed under

Article 24 of the Constitution, and this moreover in relation to actions which seek to protect fundamental rights pertaining to status and biological identify; this manifest unreasonableness also amounts to a breach of the requirement (Article 111(2) of the Constitution) of the reasonable length of court proceedings, insofar as it introduces an autonomous stage, which may also include appeals, celebrated prior to proceedings on the merits, yet which despite this is devoid of any purpose. It is also important not to lose sight of the fact that technical developments now mean that it is possible to reach a decision on the merits within an extremely short time-scale and with practically absolute certainty.

It follows from the above that Article 274 of the Civil Code is unconstitutional due to violation of Articles 3(2), 24 and 111 of the Constitution, notwithstanding the limitation of the claim contained in the referral order, which refers only to admissibility proceedings commenced by adults.

The definition of the terms of the question, adopted by the referring court subject to the limitation imposed by the latter due to its relevance in the principal proceedings, does not limit this court's assessment concerning the proceedings governed by the contested provision, insofar as affected by the vices complained of in its general and overall application to all cases involving the confirmation of the admissibility of actions.

Indeed, given the unconstitutionality which, as noted above, affects the said procedure on both a structural and functional level, the fact that it may also have the purpose of guaranteeing the interests of the minor does not impinge upon the issue of constitutionality, nor does it justify the presence in the legal order of an admissibility procedure with this sole purpose.

In fact, the requirement that the action for a court declaration of biological fatherhood or motherhood be in the interest of the minor is certainly not compromised by the rejection of proceedings pursuant to Article 274 of the Civil Code, but may where appropriate be confirmed before the evaluation of the well-foundedness of the action on the merits.

on those grounds

THE CONSTITUTIONAL COURT

declares Article 274 of the Civil Code to be unconstitutional.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 6 February 2006.

Signed:

Annibale MARINI, President

Alfio FINOCCHIARO, Author of the Judgment

Giuseppe DI PAOLA, Registrar

Deposited in the court registry on 10 February 2006.

The Director of the Registry

Signed: DI PAOLA